

Robin Carnahan
Secretary of State
Administrative Rules Division
RULE TRANSMITTAL

Administrative Rules Stamp

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MAY 06 2005

SECRETARY OF STATE
ADMINISTRATIVE RULES

A "SEPARATE" rule transmittal sheet **MUST** be used for EACH individual rulemaking.

A. Rule Number 4 CSR 240-29.020
Diskette File Name Final Rule 29.020
Name of person to call with questions about this rule:
Content Keith R. Krueger Phone 573/751-7510 FAX 573/751-9285
E-mail address keith.krueger@psc.mo.gov
Data entry Carla Schnieders Phone 573-522-9038 FAX 573-526-6969
E-mail address carla.schnieders@psc.mo.gov
Interagency mailing address GOB, 200 Madison Street, 8th Floor, J.C. MO 65102
Statutory Authority Sections 386.040 and 386.250 Current RSMo date 2000
Date filed with the Joint Committee on Administrative Rules Exempt per Sections 536.024
and 536.037 RSMo 2000 and Executive Order No. 97-97 (June 27, 1997)

B. CHECKLIST guide for rule packets:

- | | |
|--|---|
| <input checked="" type="checkbox"/> This transmittal completed | <input type="checkbox"/> Forms, number of pages <u> </u> |
| <input checked="" type="checkbox"/> Cover letter | <input type="checkbox"/> Authority section with history of the rule |
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Public cost statement |
| <input type="checkbox"/> Small business impact statement | <input type="checkbox"/> Private cost statement |
| <input type="checkbox"/> Fiscal notes | <input type="checkbox"/> Hearing date <u> </u> |

C. RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking (choose one) ☐ rule, ☐ amendment, ☐ rescission, or ☐ termination

MUST include effective date

☐ Proposed Rulemaking (choose one) ☐ rule, ☐ amendment, or ☐ rescission
☒ Order of Rulemaking (choose one) ☒ rule, ☐ amendment, ☐ rescission, or ☐ termination

MUST complete page 2 of this transmittal

☐ Withdrawal (choose one) ☐ rule, ☐ amendment, ☐ rescission or ☐ emergency)
☐ Rule action notice ☐ In addition ☐ Rule under consideration

D. SPECIFIC INSTRUCTIONS: Any additional information you may wish to provide to our staff

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

RULE TRANSMITTAL (PAGE 2)

E. ORDER OF RULEMAKING: Rule Number 4 CSR 240-29.020

1a. Effective Date for the Order

☒ Statutory 30 days

Specific date _____

1b. Does the Order of Rulemaking contain changes to the rule text?

☒ YES ☐ NO

1c. If the answer is YES, please complete section F.

If the answer is NO, **STOP** here.

F. Please provide a complete list of the changes in the rule text for the order of rulemaking, indicating the specific section, subsection, paragraph, subparagraph, part, etc., where each change is found. It is especially important to identify the parts of the rule that are being deleted in this order of rulemaking. Give an explanation of each section, subsection, etc. which has been changed since the proposed rulemaking was published in the Register.

In Paragraph (17), the date at the end of the statutory citation has been changed from "2003" to "2004."

The entire last sentence has been deleted from Paragraph (17).

The entire text of Paragraph (34) has been deleted and replaced with the following:

"Telecommunications Company means those companies as set forth by Section 386.020 (51) RSMo Supp. 2004."

In the last sentence of Paragraph (42), the word "may" has been inserted after "elements," and commas have been inserted after "include" and after "to."

Paragraph (43) has been deleted in its entirety.

Paragraphs (44) and (45) have been renumbered.

NOTE: ALL changes MUST be specified here in order for those changes to be made in the rule as published in the *Missouri Register* and the *Code of State Regulations*.

Add additional sheet(s), if more space is needed.

COPIES
Title 4 – DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 240 – Public Service Commission

Chapter 29 – Enhanced Record Exchange Rules

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ORDER OF RULEMAKING

SECRETARY OF STATE
ADMINISTRATIVE RULES

By the authority vested in the Public Service Commission under Sections 386.040 and 386.250 RSMo 2000, the Commission adopts a rule as follows:

4 CSR 240-29.020 Definitions is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 3, 2005 (30 MoReg 49). Those sections of the proposed rule with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

COMMENT: Socket Telecom, XO Communications, and Big River Telephone Company (Socket, XO, and Big River) suggest adding a definition to this rule. Socket, XO, and Big River submitted written comments contending that other local exchange carriers may misinterpret 4 CSR 240-29.030 as prohibiting calls destined to Internet Service Providers (ISPs) from traversing the LEC-to-LEC network. According to Socket, XO and Big River, the Federal Communications Commission (FCC) has defined such traffic as interstate in nature, but requires local exchange carriers to provide local services to ISPs rather than exchange access services. In order to remedy such potential misinterpretation, Socket, XO, and Big River suggest adding a definition of ISP-bound traffic and a provision to ensure that it is clear the rule contains no prohibition on ISP-bound traffic from traversing the LEC-to-LEC network. For a definition of ISP-bound traffic, Socket, XO, and Big River suggest: "ISP-bound traffic - traffic (excluding CMRS traffic) that is routed by local exchange carriers to or from the facilities of a provider of information services, of which ISPs are a subset." Together with a change to 4 CSR 240-29.030, Socket, XO, and Big River state that they would support the proposed rules.

COMMENT: In its written comments, the Telecommunications Department Staff (Staff) also proposes adding two definitions to this rule. The Staff's proposed definition of ISP-bound traffic is similar to that suggested by Socket, XO, and Big River. According to the Staff, the definition of ISP-bound traffic should denote a subset of information access traffic, and should encompass traffic both to and *from* ISPs. The Staff also suggests adding a definition of ISPs. Staff suggests that an ISP be defined as an entity that provides its customers the ability to obtain on-line information through the Internet. Staff notes that its definitions are needed to support Staff's suggested changes to 4 CSR 240-29.010, which Staff believes are necessary to preclude transiting of ISP-bound calls in the absence of interconnection or traffic termination agreements with the terminating carrier. Otherwise, according to the Staff, interstate Voice Over Internet Protocol (VoIP) traffic will be terminated on the LEC-to-LEC network as local calls and without the knowledge of terminating carriers.

RESPONSE: We find the Staff's Internet suggestions to be premature at this time. We affirm that the LEC-to-LEC network may be used to originate calls to the Internet. However, we find the definition suggested by Socket, XO, and Big River to be too expansive. Instead, we will modify our proposed rules to indicate that calls originated from local exchange carriers to Internet service providers may traverse the LEC-to-LEC network. We will modify Section 240-29.030 (3) to address the concerns of Socket, XO, and Big River.

4 CSR 240-29.020 (5)

COMMENT: SBC recommends deletion of the last sentence in Section 5(A) because differences in the value within bit fields 167-170 and 46-49 of category 11 records have become standardized.

RESPONSE: SBC's comments do not reflect the fact that Carrier Identification Codes (CIC) are used only by interexchange carriers for traffic originated by the use of Feature Group D (FGD) protocol. SBC's comments do not reflect the fact that none of the traffic traversing the LEC-to-LEC network contains a CIC code. SBC is simply incorrect that this definition is inaccurate. The "validity" of populating an Operating Company Name (OCN) in positions 167-170 instead of a CIC in positions 46-49 does not make the sentence invalid. To the contrary, the validity is affirmed. A billing record generated for LEC-to-LEC network traffic will not contain a CIC code because the carriers utilizing the LEC-to-LEC network are not acting in an IXC capacity. Granting SBC's request to change this definition would leave the false impression that CIC codes are to be expected in the billing records of traffic recorded on the LEC-to-LEC network. Therefore, we will not adopt SBC's suggested change and we find no inaccuracy in the definition.

4 CSR 240-29.020 (17)

COMMENT: SBC suggests revising the definition of Local Access and Transport Area (LATA) to reflect that the permissible areas of Bell Operating Companies may have been, and continue to be, modified. SBC states revisions are necessary to reflect that LATA boundaries have been subsequently modified since their inception. Without explanation, SBC states Missouri's LATA boundaries have been modified.

RESPONSE AND EXPLANATION OF CHANGE: SBC provides no explanation of how the Missouri statute could be valid without references to subsequent LATA boundary modifications yet our rule must contain such references. In any regard, we will not attempt to modify Missouri's revised statutes. Instead, we will revise our definition to be entirely consistent with how the term is defined in Missouri law.

4 CSR 240-29.020 (20)

COMMENT: SBC states that modification of this definition is necessary to reflect that the Local Exchange Routing Guide (LERG) is only intended to reflect current network configurations and may not reflect actual network configurations.

COMMENT: The Missouri Independent Telephone Company Group (MITG) notes that failure to turn on numbers registered in the LERG is inappropriate, but characterizes such issues as miscellaneous, and suggests such issues are not properly within the purview of this rule.

RESPONSE: SBC suggests the LERG may not reflect current network configurations due to delays, errors and failure to timely update carrier information. Yet SBC provides no explanation of how network configurations could be updated without use of the information contained within the LERG. We agree with SBC that there may be delays etc. However, because network configurations are dependent on the LERG, we find that the delays referenced by SBC are more likely to occur in network configurations rather than in the LERG. In his Direct Testimony in Case No. TO-2005-0166, SBC witness Oyer testified about reliance upon the LERG to identify end offices, relevant tandems, and for proper delivery of traffic. According to Mr. Oyer, “[I]nformation is maintained in the LERG to assist carriers with identifying the proper routing for the purpose of delivering telecommunications traffic to the appropriate local or access tandem.” We find witness Oyer’s testimony instructive and convincing. Based on his testimony, network configurations appear to be dependent on the LERG, not vice versa. Yet in its comments SBC suggests the LERG may not reflect network configurations. SBC’s comments in the instant case provide no explanation of how network configurations come about without use of the information contained within a LERG. It would seem more likely that SBC’s suggestions pertain to translations and trunking arrangements, rather than to the LERG. Therefore, we are unable to accept SBC’s proposed change.

4 CSR 240-29.020 (34)

COMMENT: T-Mobile, Nextel, and Cingular (Joint Wireless Carriers) hold that the Commission has no right to include wireless carriers in its rule definitions.

Sprint expresses concern with the Commission’s authority over wireless carriers, and suggests this section be modified by eliminating references to wireless carriers.

RESPONSE AND EXPLANATION OF CHANGE: We will amend our definition to be entirely consistent with Missouri statutes.

4 CSR 240-29.020 (38)

COMMENT: SBC recommends modifying the definition of “traffic aggregator”. SBC opines that more differentiation is needed between the role of a traffic aggregator and that of a transit carrier. SBC states that “traffic aggregators” assume financial and operational responsibility for transiting traffic. SBC further states that an aggregation function may occur at a LEC-to-LEC network tandem location in addition to an end office. SBC also

proposes to use the definition of traffic aggregator to codify the Missouri business relationship between transiting carriers and terminating carriers. SBC states that its contracts with other carriers reflect such business relationships and, as such, should be stated in the rule section.

RESPONSE: We disagree with SBC's assertion that our rule describes transiting carriers as placing traffic on the network at a tandem office. In fact, our definition says nothing about where a transiting carrier places traffic on the network. Rather, our rule simply acknowledges that a transiting function occurs with the use of a tandem office. This fact cannot be disputed, in spite of SBC's references to Type I wireless origination. Moreover, we find confusing SBC's suggestion that "transiting carriers and carriers providing switching services are not traffic aggregators." To our knowledge, traffic aggregators do have switches and are providing a "switching service." We also decline to define the functionality of aggregators and transiting carriers based upon financial responsibility. We prefer that our rules define aggregators and transiting carriers based on specific functionality rather than financial responsibility. We find that adoption of SBC's suggestions would create confusion and we decline to adopt the suggested changes.

4 CSR 240-29.020 (39)

COMMENT: SBC recommends modifying the definition of "transiting carrier". To help differentiate the role of transiting carriers from traffic aggregators, SBC suggests adding the following: "Transiting carriers and carriers providing switching services are not traffic aggregators."

RESPONSE: We decline to make changes to this definition for the reasons stated in our response to 4 CSR-29.020 (38).

4 CSR 240-29.020 (42)

COMMENT: SBC suggests eliminating reference to specific unbundled network elements from this section. SBC opines that it is not appropriate to list specific elements in light of a recent court ruling.

RESPONSE AND EXPLANATION OF CHANGE: SBC's suggestion properly acknowledges unbundling obligations under Section 251 but neglects to acknowledge the duty of state commissions under Section 252 to determine items to be unbundled under Section 251. Thus, we decline to limit elements to those items solely determined by the FCC. Nevertheless, we recognize that the list of unbundled items may change over time and we will modify our definition to denote that such items as loops, ports and transport may or may not be included among the items required to be unbundled.

4 CSR 240-29.020 (43)

COMMENT: SBC states that a recent court decision necessitates deletion of the definition of "UNE-P".

RESPONSE AND EXPLANATION OF CHANGE: We agree with SBC that recent court rulings necessitate deletion of the term UNE-P. To the extent UNE-P or "UNE-P like" arrangements continue to exist within the LEC-to-LEC network, we will refer to these arrangements as "shared switch platforms." We will eliminate the definition of "UNE-P".

4 CSR 2340-29.020 Definitions

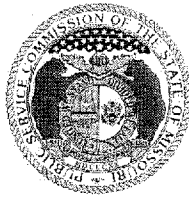
(17) LATA (Local Access and Transport Area) means that term as defined in Section 386.020(29) RSMo Supp. 2004

(34) Telecommunications Company means those companies as set forth by Section 386.020(51) RSMo Supp. 2004

(42) Unbundled Network Elements (UNE) are physical and functional elements of an incumbent local exchange carrier's network infrastructure, which are made available to competitors on an unbundled basis. Such elements may include, but are not limited to, local loops, switch ports, and dedicated and common transport facilities

(43) Wireline Communications means all telecommunications traffic other than telecommunications traffic originated pursuant to authority granted by the U.S. Federal Communications Commission's commercial mobile radio services rules and regulations.

(44) A Wireline Carrier is any carrier providing wireline communications.



Commissioners

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Chairman

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LINWARD "LIN" APPLING

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DANA K. JOYCE
General Counsel

May 6, 2005

Honorable Robin Carnahan
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

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SECRETARY OF STATE
ADMINISTRATIVE RULES

Dear Secretary Carnahan:

Re: **4 CSR 240-29.020 Definitions**

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the order of rulemaking lawfully submitted by the Department of Economic Development, Public Service Commission on this 6th day of May, 2005.

Statutory Authority: Sections 386.040 and 386.250 RSMo 2000

If there are any questions regarding the content of this order of rulemaking, please contact:

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BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission